IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

SUIT No.2693 of 1989

Mrs Divya Madhusudan S. Shah, adult, Indian Inhabitant, carrying on business in the name and style of Samir Enterprises at Anand Bhavan, 102, Keshavji Naik Road, Bombay-400009

..Plaintiff.

Versus.

M/s. Indian Electro Chemicals Ltd, a Limited Company incorporated under the Indian Companies Act and having its registered office at Odhav Road, Odhav, Ahmedabad and their Bombay Office at Yusuf Building, Mahatma Gandhi Road, Bombay - 400 001. .. Defendant.

Mr P. P. Prabhu, Advocate for the Plaintiff.

None for the Defendant.

CORAM: V.C. DAGA,J.
DATED: 28th November,2007.

ORAL JUDGMENT

1. The plaintiff carries on business under the name and style "Samir Enterprises", having her place of business at Anand Bhavan, 102 Keshavji Naik Road, Bombay - 400 009.

2. The nature of business,inter-alia, consists of supply of materials to various parties. The plaintiff has filed the suit against the defendant, a Limited Company, having its registered office at Odhav Road Odhav Ahmedabad and branch office at Yusuf

Building, Mahatma Gandhi Road, Bombay on the following factual matrix.

THE FACTS:-

3. According to the plaintiff, the defendant had approached the plaintiff at it's Bombay office in or about August, 1983 and requested for supply of various materials required by it on credit facility.

4. According to the plaintiff,on the usual terms and conditions, she has supplied goods on credit. The defendant agreed to the terms of the plaintiff-firm. The said terms, inter alia, included the obligations on the part of the defendant to pay for the price of the goods at Bombay on the agreed date. The defendant had agreed to pay interest at the rate of 24% per annum per month on the amount of bill remaining unpaid after expiry of the agreed date of payment.

5. According to the plaintiff, defendant-agreed to the usual terms of the plaintiff-firm. Accordingly, business transactions started between them resulting in

number of dealings between them which are reflected in the books of account. In the said account of the defendant, plaintiff firm has debited from time to time, in usual course of business, the amount payable by the defendant.

6. According to the plaintiff, firm has also given credit to the defendant which the defendant was entitled. According to the plaintiff, after having made verification of the books of account, plaintiff firm has to recover Rs. 1,45,952.62 ps. for the goods sold, supplied and delivered.

7. The plaintiff also states that the defendant has acknowledged its liability by putting its signature on the balance confirmation letter and promised to pay its liability in the sum of Rs. 1,44,902.62 ps. According to the plaintiff, endorsement at the bottom of the said statement reading; as, "verified with our books of account and found O.K." was also made by the defendant.

8. According to the plaintiff, inspite of repeated requests, the defendant did not pay its outstanding dues. Thus, plaintiff is

entitled to recover Rs. 2,49,627.50 with interest on Rs.1,44,902.62 ps. @ Rs. 24% per annum from 2.9.1986 till the date of filing of the suit. That is how, the plaintiff has filed the suit for recovery of Rs.2,49,627.50 ps.

9. The plaintiff has also filed photostat copies of the documents alongwith the plaint in support of the suit claim.

10. On being summoned, the defendant appeared through its Advocate but failed to file written statement. Consequently, the plaintiff was directed to file affidavit of evidence and original documents in support of the suit claim by order dated 13.8.2007. Accordingly, the plaintiff has filed affidavit of evidence, duly affirmed by the plaintiff herself and has produced 32 documents in support of the suit claim. All these documents are proved through the said affidavit. Consequently, they are marked as **Exhs.P-1 to P-32.**

11. The plaintiff herself appeared before this Court and offered herself for cross-examination. Since nobody was appearing

on behalf of the defendant, the affidavit remained unchallenged.

CONSIDERATION:

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12. Learned counsel for the plaintiff was heard. After having heard plaintiff, I am constrained to observe that averments made in the plaint for want of challenge and the documents having been proved by the plaintiff through her evidence, suit of the plaintiff is liable to be decreed Hence, the following order:

ORDER

(i) The suit is decreed.

(ii) The defendant do Rs.1,45,952.62 ps. with interest thereon from the date of the suit at the rate of 12% per annum till realization of decretal amount in full and final with costs.

(iii) Decree be drawn in terms of this order.

JUDGE.